

[Cite as *State v. Swingle*, 2008-Ohio-2214.]

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ROBERT G. SWINGLE, JR.

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. CT2007-0057

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Court of Common  
Pleas, Case No. CR2006-0207

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

May 6, 2008

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Wise, J.*

{¶1} Defendant-appellant Robert G. Swingle, Jr. appeals the August 20, 2007, denial of his Motion for Judicial Release by the Muskingum County Court of Common Pleas. Plaintiff-Appellee is the State of Ohio.

### **STATEMENT OF THE CASE AND FACTS**

{¶2} Defendant-appellant Robert G. Swingle, Jr. was indicted on five counts of drug trafficking involving separate incidents occurring on different days. Plea negotiations yielded a recommendation from the State of Ohio that Defendant-Appellant serve an aggregate term of three years imprisonment. (T. at 3-4).

{¶3} On October 2, 2006, Defendant-Appellant entered a plea of guilty to all five counts. (Plea T. at 1-17).

{¶4} At the plea hearing, the trial court informed Defendant-Appellant that he was facing a mandatory prison term. (Plea T. at 5-6).

{¶5} At the sentencing hearing, defense counsel indicated on the record that Defendant-Appellant was in agreement with the sentence being recommended by the State (Sent. T. at 3-6). Nowhere in the transcript is there any mention of eligibility or ineligibility for judicial release.

{¶6} On November 27, 2006, the trial court sentenced Defendant-Appellant to a mandatory sentence of three years in prison on count four, a felony of the third degree (Sent. T. at 6-7). The remaining counts ran concurrently to that three-year sentence. *Id.*

{¶7} On August 9, 2006, Defendant-Appellant filed a request for judicial release after serving six months of that sentence.

{¶18} By Judgment Entry file August 20, 2006, the trial court denied that request based upon the mandatory nature of the sentence. This appeal follows.

{¶19} Appellant assigns the following sole error for review:

**ASSIGNMENT OF ERROR**

{¶10} “THE DEFENDANT-APPELLANT WAS DENIED DUE PROCESS, AS HIS PLEA WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY ENTERED.”

**I.**

{¶11} In his sole assignment of error, Appellant argues that his plea was not made knowingly, intelligently and/or knowingly.

{¶12} Upon review of the record we find that the decision from which Appellant is appealing is a denial of his motion for judicial release, not a motion to withdraw his guilty plea, which has not been filed.

{¶13} It is well-established that the denial of a motion for judicial release is not a final appealable order. *State v. Masko*, Trumbull App. No.2004-T-0070, 2004-Ohio-5297, ¶ 2, citing *State v. Singh* (2001), 146 Ohio App.3d 38. We, therefore, lack jurisdiction to address this issue.

{¶14} For the foregoing reasons, Appellant’s appeal is hereby dismissed.

By: Wise, J.  
Farmer, P. J., and  
Delaney, J., concur.

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/S/ JOHN W. WISE

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/S/ SHEILA G. FARMER

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/S/ PATRICIA A. DELANEY  
JUDGES

JWW/d 428

